

481—25.4(10A) Eligibility standards. Pursuant to the authority of Iowa Code section 10A.104(8), the department has established standards to certify targeted small businesses. These standards are intended to indicate whether a business is owned, operated and actively managed by targeted group persons.

25.4(1) The applicant shall be an independent business. The following list describes elements of a business which indicate independent status.

a. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and shall share in the risks commensurate with their ownership interest. This shall be demonstrated by the substance rather than the form of the arrangements. Title and authority shall be commensurate with ownership and control.

b. The business shall be owned, operated and actively managed by the same people, a single management.

c. A board of directors and stockholders shall each have a membership comprised of at least 51 percent targeted group persons.

d. The applicant business shall be compensated for facilities, inventory, equipment, labor, or other items which it owns and shares with any other business. Compensation shall not vary from common industry practice.

e. The targeted group person owner(s) shall have independent authority and ability to incur liability and to decide financial and policy questions. The business arrangements of owners, directors, officers or key employees with businesses which are not minority-, woman-, or persons with disabilities-owned shall not vary from common industry practice. Each industry has practices which differ from other industries.

f. Independent authority and ability to hire and to fire all personnel shall be vested in the targeted group person owner(s).

g. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient for certification as a targeted small business.

25.4(2) The targeted group person owner(s) shall make the business decisions for the business without any restrictions, either formal or informal. This includes, but is not limited to, bylaw provisions, partnership agreements, charter requirements for cumulative voting rights, or employment agreements.

25.4(3) The targeted group person owner(s) shall direct or cause the direction of the business. The owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business.

The department will consider particular positions to determine who has major responsibility in a company. These people include, but are not limited to, those who:

- a.* Hold any applicable license;
- b.* Devote substantial time to the business;
- c.* Supervise management and field operations;
- d.* Manage financial affairs;
- e.* Prepare or approve bids or estimates;
- f.* Participate in price and bidding negotiations;
- g.* Make final decisions about staff and personnel;
- h.* Sign contracts and checks or authorize their signature.

25.4(4) Any relationship between a TSB and a business which is not a TSB, but which has an interest in the TSB, shall be carefully reviewed to determine if the interest of the non-TSB conflicts with the ownership and control requirements of this rule.

25.4(5) The contributions of capital and expertise by the targeted group person owner(s) to acquire interest in the business shall be real and substantial. The following list includes acceptable elements of ownership.

a. Company documents, such as stock certificates, articles of incorporation, minutes of board meetings, partnership agreements or income tax returns reflect targeted group person ownership;

b. Independent contributions of capital are made by the targeted group person owner(s). Proof of this independent contribution of capital made by the targeted group person owner(s) to acquire interest in the business must accompany the certification application;

c. Independent contributions of expertise are made by the targeted group person owner(s). The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the firm is engaged and in the firm's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business;

d. Independent risk of loss and share of profit by the targeted group person owner(s) are commensurate with their proportion of ownership.

Fifty-one percent or more of securities which constitute ownership or control of a corporation for purposes of establishing it as a TSB shall be held directly by targeted group persons.

An inherited business may be eligible for targeted small business status. Capital contribution, expertise and experience in the inherited business are not required. All other standards apply.

Documentation may be required to prove compliance with all standards.